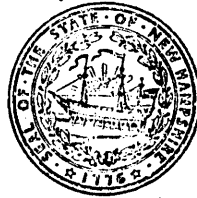


The State of New Hampshire

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opinion.

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August 13, 1974

Mr. Wallace W. Jones
Board of Taxation
19 Pillsbury Street
Concord, New Hampshire 03301

Dear Mr. Jones:

By letter dated May 18, 1973, you requested our opinion whether information filed by savings institutions pursuant to RSA 84:16-a is exempt from public disclosure under the provisions of RSA Chapter 91-A (supp), popularly referred to as the Right to Know Law.

RSA 84:16-a in part provides that every savings institution

... shall, on or before May first in each year, make and transmit to the division of interest and dividends of the [Board of Taxation], upon forms prescribed and furnished by said division, a statement under the penalties of perjury setting forth the following facts as they existed on April first next preceding in such year; the amount of all savings deposits, savings shares, savings share accounts or other similar evidences of savings, on which the corporation pays interest or dividends, and the amount of all its capital stock or special deposits, belonging to residents of each town in the state; and the same facts in relation to depositors, shareholders and stockholders who do not reside in the state or whose residence is unknown.

These reports, we understand, contain no information as to individual depositors, shareholders, or stockholders. It is our further understanding that in the past, various organizations have used these reports in order to determine the concentration of savings deposits belonging to residents of each town of the State. Presumably this information is used by savings institutions and those considering the organization of savings institutions for their own commercial purposes.

In enacting RSA Chapter 91-A, the Legislature "placed a high premium on the public's right to know". Herron v. Northwood, 111 N.H. 324, 327 (1971). Under RSA 91-A:4 (supp),

[e]very citizen during the regular or business hours of all such bodies or agencies ... has the right to inspect all public records ... and to make memoranda abstracts, photographic or photostatic copies, of the records or minutes so inspected, except as otherwise prohibited by statute or section 5 of this chapter.

No question has been raised but that the Board of Taxation is a "body or agency" within the meaning of this statute. Our review of Chapter 84, wherein the above-quoted reporting provision is contained, does not reveal any statute which would prohibit the inspection of these reports. As a result, if these reports are to be exempt from disclosure, they would have to be exempt from the Right to Know Law under RSA 91-A:5 (supp). This section provides as follows:

The records of the following bodies are exempted from the provisions of this chapter:

- I. Grand and petit juries.
- II. Parole and pardon boards.
- III. Personal school records of pupils.
- IV. Records pertaining to internal personnel practices, confidential, commercial, or financial information, personnel, medical, welfare, and other files whose disclosure would constitute invasion of privacy.

While your letter does not state whose privacy might be invaded by the disclosure of this information, there appears to be two possible alternatives. Initially, from the viewpoint of a savings institution, it might be argued that the report contains commercial and/or financial information of the institution whose disclosure would constitute invasion of its privacy. Secondly, from the viewpoint of an individual depositor, it might be argued that the report contains financial information about him, disclosure of which would constitute an invasion of his privacy. It is our opinion, however, that no matter which of the above viewpoints is adopted, that the reports filed pursuant to RSA 84:16-a are not exempt from disclosure under the Right to Know Law.

The right of privacy has been defined as "the right to be let alone". Cooley, Torts 2d Ed. (1888) 29. This is an individual right, and there is no corollary right in a corporation or association.

It seems to be generally agreed that the right of privacy is one pertaining only to individuals, and that a corporation or a partnership cannot claim it as such, although either may have an exclusive right to the use of its name, which may be protected upon some other basis such as that of unfair competition. Prosser, Torts 4th Ed. Ch. 20 §117 at p. 815.
[Emphasis added.]

The New Hampshire Supreme Court in Mans v. Lebanon School Board, 112 N.H. 160 (1972) held that "[s]ubsection IV [of RSA 91-A:5] means that financial information and personnel files and other information necessary to an individual's privacy need not be disclosed". Id at 162 [emphasis added].

Since savings institutions, as business organizations, have, at best, a sharply limited right to privacy as that term is commonly understood; and further, since the information in question is invariably the product of a business operation, and, as such, cannot be equated with personal financial information, disclosure of the information in question would not invade any rights or privileges endemic to savings institutions as business organizations.

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In determining whether an individual's right of privacy would be invaded by public disclosure of this information, we have analyzed the "Statement of Franchise Tax and Report Form", the form which savings institutions must file. It is important to note, as hereinabove mentioned, that none of the information called for requires the individual identification of a depositor. In fact, the only information which a savings institution must supply is the amount of capital stock and savings which it holds belonging to residents of each town of the State and like information for non-residents. "[T]he right to privacy is a fundamental personal right" [Emphasis added.] Griswold v. Connecticut, 381 U.S. 479, 494 (1965) (Golberg, J. concurring). This was acknowledged by Judge Grimes in Mans by his noting that the intent of RSA 91-A:5 was to "deny the public the right to know personal information". [Emphasis added.] 112 N.H. at 166 (dissenting opinion). Since no personal information relative to any individual depositor is included within the form required to be filed, we find no invasion of rights of individual depositors which would be occasioned by the release of the reports.

Finally, we note that the information in question was routinely available to the public prior to the Tax Commission's decision to withhold it as expressed in a letter dated June 28, 1972.

There is no specific provision in Chapter 84 making the reports in question confidential, and, during the period when they were made available to the public, no hue and cry of which we are aware was heard in opposition to that practice. In our view, the uncontested administrative practice, which you have advised extends back at least to the enactment of RSA 84:16-a in 1961, settles in the negative the question whether the reports were intended to be confidential under the terms of the statute providing for them. Cf. N.H. Retail Grocers Association v. Tax Commission, 113 N.H. ____.

The only basis for the decision stated in the June 28, 1972 letter is that the information is privileged under RSA 91-A:5. In our opinion, it is inconsistent with the basic purpose of the Right to Know Law that it be used to create and justify a privilege for certain information where none existed or was asserted prior to the enactment of the Law.

Mr. Jones

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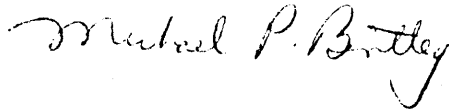
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Accordingly, it is our opinion that the reports filed by savings institutions pursuant to RSA 84:16-a should be made available for public inspection.

Sincerely,

A handwritten signature in cursive script, reading "Warren B. Rudman".

Warren B. Rudman
Attorney General

A handwritten signature in cursive script, reading "Michael P. Bentley".

Michael P. Bentley
Assistant Attorney General